



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

■
Docket No: 5203-21
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

A three-member panel of the Board, sitting in executive session, considered your application on 10 January 2022. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of the Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies, to include the Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). In addition, the Board considered the advisory opinion (AO) furnished by a qualified mental health professional dated 18 November 2021, which was previously provided to you.

You enlisted in the Marine Corps and began a period of active duty on 16 June 1977. On 2 May 1978, you received nonjudicial punishment (NJP) for disobeying a lawful order by being out of bounds. On 16 October 1977, you began a period of unauthorized absence that lasted 144 days, ending with your apprehension on 9 March 1978. On 14 May 1978, you began a period of UA that lasted 93 days, ending with your apprehension on 15 August 1978. On 7 September 1978, you submitted a written request for an undesirable discharge for the good of the service in order to avoid trial by court-martial for two specifications of UA totaling 237 days. Prior to submitting this request for discharge, you conferred with a qualified military lawyer, were advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. You submitted a statement, and your detailed Defense Counsel submitted an Administrative Discharge Data Form stating that you gave every indication that if you were returned to duty you

would again absent yourself without authority, and it was believed that any rehabilitative effort would only serve to delay further UA. It was further recommended that your request be approved, to avoid unnecessary expenditure of time by your superiors. On 8 September 1978, a staff judge advocate reviewed your request and found it to be sufficient in law and fact to support your discharge. On 11 September 1978, the separation authority approved your request for discharge and directed that you receive an OTH discharge. Subsequently, on 21 September 1978, you received an other than honorable discharge in lieu of trial by court-martial. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor.

A qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO regarding your assertion that you were suffering from an opioid addiction or mental health condition during your service. The AO noted that based on the current available evidence, there is insufficient evidence that you incurred a mental health condition during military service, and there is insufficient evidence that your discharge could be attributed to a mental health condition.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to your assertions that you went UA for a family emergency after being denied leave by your platoon sergeant, that you were raised by your grandmother since your were one year old, that she passed away, and that because she was not considered immediate family, you were denied emergency or regular leave. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP, two lengthy periods of UA lasting over 19 months, and both ending in your apprehension, the referral of charges to a court-martial and your request for discharge, outweighed these mitigating factors. Additionally, the Board believed that considerable clemency was extended to you when your request for discharge was approved. The Board also concurred with the AO that based on the current available evidence, there is insufficient evidence that you incurred a mental health condition during military service, and there is insufficient evidence that your discharge could be attributed to a mental health condition. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when

applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

1/21/2022

[REDACTED]

Executive Director

[REDACTED]